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OFFICE OF INSURANCE COMMISSIONER

Technical Advisory - Technical Assistance Advisory T 97-3

July 9, 1997

Attn: Property & Casualty State Filing Managers

Subject: Substitute Senate Bill 5750

Substitute Senate Bill 5750, which establishes a use-and-file system for property/casualty commercial lines rates and forms, was signed into law by Governor Locke on May 19, 1997. Personal lines rates and forms are still subject to prior approval. This technical assistance advisory contains information that filers of commercial lines rates and forms need to know, in order to adapt their procedures to the use-and-file system. The last section of this advisory also contains information applicable to all property/casualty form filings--not just commercial lines.

Effective date of the law

SSB 5750 takes effect on July 27, 1997. Commercial lines rates and forms used for coverages effective before July 27 must first be approved by the Office of Insurance Commissioner (OIC). For coverages effective on or after July 27, an insurer must file the rates and forms within 30 days after the initial date of their use.

What it means to "issue" a policy or "use" a rate or form

A policy (or a coverage that is part of a policy) will be considered "issued" on the effective date of coverage, regardless of when the insurer processed the policy and of when the insured received it. A rate or form will be considered "used" on the effective date of the coverage to which the rate or form applies.

What "commercial property casualty" means

Surety, as defined in RCW 48.11.080, has not been included in the definition of "commercial property casualty." Thus surety rates must still receive OIC approval prior to use. Surety forms need not be filed. (This is not a change; see RCW 48.18.100(1).) OIC will take a common sense approach to determining which products or classes qualify as "commercial." Pursuant to RCW 48.19.080, OIC may propose a rule clarifying the definition. Although SSB 5750 defines "commercial" as "pertaining to a business, profession, or occupation," OIC does not believe that the legislation was intended to complicate the filing process by having a different system for non-business classes such as public entities and non-profit organizations, which have traditionally fallen under commercial lines. Certainly, filings pertaining primarily to insurance for individuals in their non-business pursuits will be considered to be personal lines, and thus subject to prior approval requirements.

Proposed effective date of rates or forms

An insurer must propose an effective date that is consistent with its use of the rate or form. The effective date should not be later than the insurer's first use of the rate or form. It should also not be earlier than 30 days prior to OIC's receipt of the filing. If OIC approves the filing as submitted, the insurer's proposed effective date will be used. (An insurer may always request concurrent effective dates for combinations of rate filings and forms.)

The "effective date" of a form is the earliest date on which coverage may be provided by that form. If a rate filing "becomes effective" on a given date, all policies **becoming effective** on or after that date must use the new rates. (A company still may specify different effective dates for new and renewal business.)

Deemer period

Just as under the current prior approval system (see RCW 48.18.100(3) and RCW 48.19.060(2)), OIC has 30 days in which to review a filing. If the filing is not disapproved within 30 days, it is deemed to be approved. OIC may extend the time to 45 days by giving notice to the insurer before the 30-day period has

expired.

Effective date of disapproval

Regardless of when they are used and filed, the rates and forms themselves are subject to the same statutory requirements as before (see Chapters 48.18 and 48.19 RCW), and OIC will disapprove them, when it is necessary, for the same reasons as before (see RCW 48.18.110 and 48.19.100). These reasons will be clearly stated in a disapproval letter. In such letters, OIC must also state when the rate filing or form shall be deemed no longer effective. Believing that this is "within a reasonable period thereafter," OIC will set the effective date of disapproval to be 90 days from the date the disapproval letter is mailed.

Company response to disapproval

A disapproval letter establishes a date when the rate filing or form is no longer effective. It is therefore essential that the insurer respond to the disapproval, with explanations and/or revisions, on or before that date. If the insurer does not respond by the effective date of disapproval, the filing will be closed, and the rate filing or form will be deemed no longer effective as of that date. If a company makes a good faith effort to give a timely response to OIC's grounds for disapproval, but OIC still cannot approve the rate filing or form, OIC will postpone the effective date of disapproval; it will be 90 days from the date the newest disapproval letter is mailed.

Effect of disapproval on forms

When a form is disapproved, presumably the insurer will revise it or replace it with a form that complies with statutory requirements. Upon approval of the replacement form, all policies containing the disapproved form must be endorsed to use the approved form. For each policy, this endorsement must be made effective on the effective date of the coverage provided by the disapproved form.

Each revised or replacement form must contain a unique identifier; that is, each revision must have a new form number or edition date.

Effect of disapproval on rates

When a rate filing is disapproved, there are several possible outcomes:

1. a. If the insurer subsequently provides sufficient information to enable OIC to approve the rates that were initially proposed, the rate filing becomes effective on the date initially proposed by the insurer.
2. b. If the insurer subsequently revises its proposed rates and OIC approves the revision, the revision takes effect on the effective date of disapproval of the rates originally proposed. All policies using the disapproved rates must be endorsed to use the approved rates as of the effective date of disapproval.
3. c. If the insurer accepts OIC's disapproval of its rate filing, the insurer must revert to its previous rates as of the effective date of disapproval. All policies using the disapproved rates must be endorsed to use the approved rates as of the effective date of disapproval.

In other words, in situations b. and c., the portion of the premium that has been earned as of the effective date of disapproval is unaffected. The effective date of the endorsement must be the effective date of disapproval; thus, the premium that is unearned as of that date may be affected.

New programs

A unique situation arises when OIC disapproves the first rate or form filing for a new program or coverage written by an insurer. On the effective date of disapproval of the rate filing, the insurer has no previous rates to revert to, and its continued use of the disapproved rates, which are no longer effective, would be a violation. Similarly, on the effective date of disapproval of the forms, the insurer would not have forms it could legally use. In such cases, OIC will make every effort to work with the insurer to resolve the situation, so that policyholders do not suffer because of it.

No "mixed" filings

Each filing will be considered as subject to either prior approval statutes or use-and-file statutes, but not both. When it is possible, an insurer should separate prior approval rates or forms and use-and-file rates or forms into two separate filings. When this is not possible, such as for general rules that cover both personal and commercial lines, or forms that are used for both personal and commercial lines, OIC will consider filings on a prior approval basis.

Approval and disapproval of individual forms

In reviewing both SSB 5750 and Chapter 48.18 RCW, OIC has determined that it is more correct to approve or disapprove individual forms, instead of approving or disapproving entire form filings (which may include many forms), as OIC does now. This change will benefit insurers, as acceptable forms will be approved more quickly. Their approval will not be delayed by any unacceptable forms that may be included in the same filing.

If an insurer's form filing contains some forms that are acceptable and some that are not, OIC will send the insurer a letter stating which forms are disapproved and giving the reasons for disapproval. The acceptable forms will be approved when they are reviewed by OIC, and OIC will assign the effective date proposed by the insurer. This change will apply both to commercial lines form filings subject to use-and-file provisions and to other property/casualty form filings subject to prior approval provisions.

If anyone has specific questions concerning the submission of rate filings under the new system, contact [Lee Barclay](#) at (360) 586-3685; for questions concerning form filings, contact [Terence Nordahl](#) at (360) 586-2371.